IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9842 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KILLOLBHAI VINODBHAI SHELAT

Versus

PNB MUTUAL FUND, PRINCIPAL TRUSTEE-PNB

Appearance:

MR MB GANDHI for Petitioners

MR BN KESHWANI for Respondent No. 1

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 25/04/2000

ORAL JUDGEMENT

Mr BN Keshwani learned advocate for respondents no. 1 and 2 and Mr MB Gandhi learned advocate for the petitioner submit that the respondent no. 3 is only a formal party. It has also filed reply in response to the notice issued by this Court, but no one has appeared on

behalf of the respondent no. 3 today. Learned counsel for the petitioner seeks permission to delete respondent no. 3 as party-respondent. Mr Keshwani learned advocate for respondents no. 1 and 2 has no objection to the deletion of the name of respondent no. 3. The name of respondent no. 3 is directed to be deleted from the array of the respondents at the risk and costs of the petitioner. Thus, only respondents who remain in the array of respondents are the respondents no. 1 and 2.

Rule. Mr BN Keshwani learned advocate waives service of rule on behalf of repsondents no. 1 and 2. At the request of both the sides, the matter is taken up for final hearing as the pleadings are complete and it is submitted that only short controversy is involved.

There is no dispute that the PNB Asset Management Company Limited which is a subsidiary of Punjab National Bank had floated a mutual fund scheme. There is also no dispute that the petitioners herein invested a sum of Rs. 500,000/ and this mutual fund known as PNB Mutual Regular Income Plus Scheme, 1990. The said investment become due for redemption on 1.9.96 and the dividends had already been paid up to 31st August, 1995. On 31st July, 1996, the respondents gave a roll over option to investors and option forms were sent with pre-paid postal cover. The case of the petitioners is that they had filled in the roll over option form and sent the same to the respondents in such pre-paid cover retaining the original bonds with them for the entire amount of Rs. 500,000/, and that the petitioners never opted for such redemption or encashment of the certificates, while it is not in dispute that the roll over option was issued on 31st July, 1996.The respondents sent letter dated 19.5.97 to the petitioners in Regular Income Plus Scheme 1990 (RIPS 90): Redemption, mentioning therein that units under RIPS 90 scheme have already matured with effect from 1.9.96 and while referring to earlier circular it has been further mentioned that the units of the investors, whose roll over option-letters had not been received by them till the closure date, have been treated as "REDEEMED". The petitioners responded to this letter dated 19.5.97 through their letter dated 24.7.97 mentioning therein that roll over option forms for 4000 Units held by petitioner no. 1 and 1000 Units held by petitioner no. 2 were sent in the self addressed pre-paid cover and, that they were now surprised to receive a letter dated 19.5.97. It is pointed out that in fact, said two letters dated 24.7.97 were sent and kept the copies separately in the record of petitioners no. 1 and 2. These letters were under registered cover

and the receipts thereof by the respondents is not denied. The petitioners gave notice on 8th August, 1999 and the same was replied on behalf of respondents no. 1 and 2 on 23rd September, 1999 whereby the petitioners informed that their roll over option has not been received and the units held by the petitioners have been marked for redemption. It is also mentioned that the letter/redemption notification had been sent along with the dividend warrant on 8.11.96 by registered Post, but no response has been received. It is also mentioned that after that a notice dated 19.5.97 was again sent to surrender original unit certificates for redemption of units and no dividend/interest shall be accrued from the date of redemption i.e. 31.8.96. A reference was also made to the earlier communication dated 1.6.98 that the folio of petitioners were still outstanding for release of redemption process and redemption proceeds await surrender of original unit certificate. It has also been clarified in para-5 of this letter that annual report 1997-98 were sent to all the investors of RIPS-90 and it was just a performance report of the scheme for forth coming issue. . On this premises, it was mentioned in this letter dated 23rd September, 1999 that it was not possible to accept the option of the petitioners for roll over since all the relative documents were filed with SEBI/Govt. authority. The petitioners were therefore, called upon to surrender the original unit certificate.

The petitioners filed this petition before this Court on 9.12.99 with the prayers as under:

A) Hon'ble Court be pleased to issue a writ of mandamus or any other writ order or direction directing the respondent authority to treat the petitioners certificates of 1 lac and 4 lacs respectively in all an investment of Rs. 5 lacs in PNB RIPS-90 as RIPS 90 Roll Over scheme of 1996 for a further period of roll over of the said investment from 1996 till its redemption date in the year 2001-2002 and be further pleased to direct them to pay interest/dividend over the said investment as have been paid to other investors for the year 1996-97, 1997-98, 1998-99 together with an interest of 15% over such dividend from the date it become due and payable to the investor till payment.

B) Hon'ble Court be pleased to direct the respondent to pay Rs. 2,11,914-06 payable as on 31st July, 1999, towards the minimum dividend assured at the

rate of 12.5% on the aforesaid amount Rs. 5 lacs, in PNB RIPS- 90 ROLL OVER SCHEME of 1996, plus the difference between the actual dividend paid over and above the assured dividend paid and directing them to continue to pay the assured dividend till the date of maturity of RIPS-90 ROLL-OVER.

C) Be pleased to direct the respondent to pay additional amount of Rs. 20,000/ in the form of compensatory for the shock, agonies and uncalled for harassment to the petitioners.

D) In the alternative to prayer A be pleased to direct the respondent to extend the repurchase facility as stated in PNB RIPS-ROLL OVER OPTION as may be available as on the date and interest from 1996-97 till date be directed to be paid.

E) Be pleased to grant any other and further relief/reliefs as Hon'ble Court may think fit and proper in the interest of justice.

Learned counsel for respondents no. 1 and 2 Mr. Keshwani has stated that so far as the return of the amount of Rs. 5 lacs in all, with respect to the bonds held by the petitioners, the respondents are ready and willing to return the same amount as there is no question of now accepting the petitioners' request for accepting the option of roll over. So far as the facts as to whether the petitioners had sent the option in the pre-paid cover is concerned, the same is in dispute and that dispute cannot be adjudicated before this Court and, therefore, the prayer with regard to the acceptance of the option of the petitioners for roll over scheme cannot be accepted.

On behalf of the petitioners, it has been submitted that even if the petitioners prayer for roll over option is not directed to be accepted by the respondents, the respondents may be at least be called upon to compensate the petitioners and pay the interest at a reasonable rate because the amount has remained lying with the respondents. It has been further submitted that the respondents themselves called upon the investors to send the option forms in the pre-paid postal cover and, whereas it is the case of the petitioners that the same had been duly sent in the pre-paid cover to the respondents and even if it is taken that the same was not received by the respondents, the petitioners cannot be deprived of the interest at least on that amount even if

the prayer for roll over option is not accepted. The learned counsel for the petitioners submitted that had the petitioners not opted for the roll over scheme, they would have surrendered the bonds for the purpose of taking their amount and the very fact that the bonds had been retained by the petitioners with them should be enough to assume in their favour that they had send the roll over option. It was also pointed out that in the scheme of the roll over option, it was also mentioned that the trust may accept any option, later received thereafter, if it is satisfied that the Unit holder had despatched the option letter before 24.8.96 and could not reach the office of the registrar due to postal delay. On behalf of the petitioners it has been submitted that when the petitioners sent the reply dated 24.7.97 to the respondent's letter dated 19.5.97, the request of the petitioners could have been entertained and accepted as except sending the zerox copy and writing of this letter, the petitioners had no means with regard to the despatch of the option letters. It was also submitted that the annual report 1997-98 for PNB Regular Income Plus Scheme, 1990 (ROLL- OVER) was sent to the petitioners, as it appears from page 43 and therefore, the petitioners were still treated to be concerned with the roll over scheme and this submission has been made on behalf of the petitioners even in face of the facts mentioned in para-5 of the letter dated 23rd September, 1999 that the said reports were sent to all the investors of RIPS-90 and it was just a performance report of the scheme for forth coming issue.

In the facts and circumstances of the case, it appears that there has been some negligence on both the sides. It appears to be a case of contributory negligence on the part of the petitioners as well as on the part of the respondents and without conceding to the rate of interest on which interest may be paid to the petitioners for the period in question, both the sides have stated that the court may award interest at any reasonable rate. It is not in dispute that the minimum interest which has been paid to the members of the scheme is 12.5% per annum despite the reduction of the value of actual Unit to Rs. 80/ from Rs. 100/ because the rate of interest at 12.5% per annum was the minimum assured rate of interest. Since this Court finds it to be a case of contributory negligence on the part of the petitioners as well as respondents, the ends of justice will be met if the respondents are directed to pay the interest to the petitioners from 1.9.96 at the rate of 6.25% per annum i.e.fifty percent of the minimum assured rate of interest.

Accordingly, this special civil application succeeds in part and it is directed on the basis of the consensus of both the parties that the amount of the redemption shall be paid to the petitioners as if the petitioners' bond stood redeemed on 1.9.96 and due amount of interest at the rate of 6.25% per annum from the due date till the date of the actual payment of the entire amount,subject to the surrendering of the bond as required, and after deducting the income at source, if any, in accordance with law. Mr Keshwani learned advocate for the respondents submits that the due amount with interest as above shall be paid within a month's time from the date on which the bonds are surrendered before the respondent no. 2. This Special Civil Application is partly allowed as above. Rule is made absolute accordingly in the aforesaid terms. No order as to costs.

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